

1 Jeffrey Weiss (AZ Bar No. 012012)  
jweiss@weissiplaw.com  
2 Karen J.S. Fouts (AZ Bar No. 019993)  
kfouts@weissiplaw.com  
3 WEISS & MOY, P.C.  
4 4204 N. Brown Avenue  
5 Scottsdale, Arizona 85251  
6 Tel: (480) 994-8888  
Fax: (480) 947-2663

TN Reg- 3,669,905  
3,920,521  
3,923,777

7 Attorneys for Plaintiffs  
8 COSMETIC ALCHEMY, LLC and  
9 STELLA INTERNATIONAL, LLC

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF ARIZONA**

12  
13 COSMETIC ALCHEMY, LLC,  
14 an Arizona limited liability company, and  
15 STELLA INTERNATIONAL, LLC,  
an Arizona limited liability company,

CASE NO.: \_\_\_\_\_

**COMPLAINT**

**(Jury Trial Demanded)**

16 Plaintiffs,

17 v.

18  
19 AMAZON.COM, INC.,  
a Delaware corporation,

20 Defendant.  
21

22  
23 Plaintiffs Cosmetic Alchemy, LLC ("Cosmetic Alchemy") and Stella  
24 International, LLC ("Stella") (collectively "Plaintiffs"), by their undersigned counsel, for  
25 their Complaint against Defendant Amazon.com, Inc. ("Amazon"), state and allege as  
26 follows:  
27  
28



JURISDICTION AND VENUE

6. Jurisdiction is proper in this Court under the Lanham Act, 15 U.S.C. § 1121, and pursuant to 28 U.S.C. §§ 1331, 1338, and 1367.

7. This Court has personal jurisdiction over Amazon and venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b) and (c). A substantial part of the events or omissions giving rise to Plaintiffs' claims herein occurred in this judicial district.

ALLEGATIONS COMMON TO ALL COUNTS

8. Cosmetic Alchemy manufactures and sells cosmetic and cosmeceutical products.

9. Among the products manufactured and sold by Cosmetic Alchemy are LiLash<sup>®</sup>, an eyelash stimulator product, and LiBrow<sup>®</sup>, an eyebrow stimulator product.

10. Pursuant to an exclusive license from Stella, Cosmetic Alchemy has been selling its eyelash and eyebrow stimulator products under the trademarks LILASH, LI LASH, and LIBROW (collectively, "the LILASH Marks"), since 2008.

11. Stella is the owner of all right, title, and interest in and to United States Trademark Registration No. 3,669,905 for LI LASH for "cosmetic eyelash products, namely, make-up, mascara, eyelash conditioner and eyelash conditioner used for eyelash rejuvenation" (the "'905 Registration"), issued on August 18, 2009. The '905 Registration is valid and subsisting and in full force and effect. A true and correct copy of the '905 Registration is attached hereto as Exhibit A.

12. Stella is the owner of all right, title, and interest in and to United States Trademark Registration No. 3,920,521 for LILASH for "cosmetic eyelash products, namely, make-up, mascara, eyelash conditioner used for eyelash rejuvenation" (the "'521 Registration"), issued on February 15, 2011. The '521 Registration is valid and subsisting and in full force and effect. A true and correct copy of the '521 Registration is attached hereto as Exhibit B.

1           13. Stella is the owner of all right, title, and interest in and to United States  
2 Trademark Registration No. 3,923,777 for LIBROW for "cosmetic eyebrow products,  
3 namely, make-up, mascara, eyebrow conditioner for eyebrow rejuvenation" (the "'777  
4 Registration"), issued on February 22, 2011. The '777 Registration is valid and  
5 subsisting and in full force and effect. A true and correct copy of the '777 Registration is  
6 attached hereto as Exhibit C.

7           14. As a result of extensive use, advertising, and promotion of the LILASH Marks  
8 in interstate commerce, Stella is also the owner of significant common law rights in the  
9 LILASH Marks.

10           15. At all times relevant to this Complaint, Cosmetic Alchemy has been and is  
11 Stella's exclusive licensee under the '905, '521, and '777 Registrations.

12           16. Cosmetic Alchemy sells its LiLash<sup>®</sup> and LiBrow<sup>®</sup> products directly to  
13 consumers and, in addition, sells these products through authorized distributors.

14           17. Cosmetic Alchemy maintains strict quality control standards for its products.  
15 All authorized LiLash<sup>®</sup> and LiBrow<sup>®</sup> products sold by Cosmetic Alchemy contain a serial  
16 number and a batch number for authenticity, security and quality control purposes.

17           18. Cosmetic Alchemy has spent considerable sums of money in the advertising  
18 and promotion of its products bearing the LILASH Marks, including the LiLash<sup>®</sup> and  
19 LiBrow<sup>®</sup> products.

20           19. As a result of extensive use, advertising and promotion of products bearing  
21 the LILASH Marks, including the LiLash<sup>®</sup> and LiBrow<sup>®</sup> products, the LILASH Marks  
22 have become closely associated with Plaintiffs, and have acquired great value and  
23 goodwill and identify Plaintiffs, and the LiLash<sup>®</sup> and LiBrow<sup>®</sup> products, exclusively.

24           20. Plaintiffs have discovered that products bearing the LILASH Marks are being  
25 offered for sale by unauthorized sellers through Amazon on Amazon's website at  
26 www.amazon.com. Such products are claimed to be "by Cosmetic Alchemy," "by  
27 LiLash," or "by LiBrow."  
28

1           21. For example, a seller known as "Lashvitamin" has been and, at the time of the  
2 filing of this Complaint, is currently offering for sale through Amazon on Amazon's  
3 website eyelash and eyebrow products bearing the LILASH Marks. True and correct  
4 copies of representative samples of Lashvitamin's listings for such eyelash and eyebrow  
5 products, as they appear on Amazon's website, are attached hereto as Exhibit D (the  
6 "Lashvitamin Listings").

7           22. While the Lashvitamin Listings are for products that bear the LILASH Marks,  
8 and which claim to be "by Cosmetic Alchemy," "by LiLash," or "by LiBrow," these  
9 products lack a serial number and/or batch code. In this regard, the Lashvitamin Listings  
10 claim that the products are being sold without their packaging, which means that the  
11 products do not bear the serial numbers and/or batch codes associated with authentic  
12 Cosmetic Alchemy products.

13           23. The absence of a serial number and/or batch number means one of two things.  
14 One possibility is that the products being sold under the Lashvitamin Listings are  
15 counterfeit. The second possibility is that the products authentic, but the seller has  
16 removed the serial number and/ or batch number in an effort to circumvent Cosmetic  
17 Alchemy's program for ensuring authenticity, quality control and safety. Under either  
18 scenario, the public safety is at risk. Since the products are intended to be used near the  
19 eyes, counterfeit products being sold for such use involve a risk that such products are  
20 unsafe. Further, products being sold without their serial number and/or batch number put  
21 the public safety at risk by removing means of recall and means of product dating.

22           24. The products being sold and/or offered for sale on Amazon's website under  
23 the Lashvitamin Listings are not authorized or consented to by Cosmetic Alchemy, or any  
24 agent acting on its behalf.

25           25. Cosmetic Alchemy has not directly supplied product to Amazon for resale and  
26 has not authorized any of its resellers or distributors to supply product for resale on  
27 Amazon's website.  
28

1           26. Cosmetic Alchemy has written contracts with its distributors which expressly  
2 prohibit the distributors from selling to any online catalog, including specifically to  
3 Amazon.

4           27. On February 25, 2011, Cosmetic Alchemy contacted Amazon by email,  
5 notifying Amazon that unauthorized LiLash<sup>®</sup> and LiBrow<sup>®</sup> products were being offered  
6 for sale on Amazon's website, and requesting the immediate removal of such product  
7 offerings from Amazon's website. A true and correct copy of the February 25 email is  
8 attached hereto as Exhibit E.

9           28. By email dated March 24, 2011, Amazon responded, requesting further  
10 information from Cosmetic Alchemy regarding the products being sold under the  
11 Lashvitamin Listings, including the "Order ID Number(s)" and "links" to the product  
12 listings at issue or the "ASIN" of such product listings. A true and correct copy of  
13 Amazon's March 24 email is included in an email chain attached hereto as Exhibit F.

14           29. Sometime between March 24 and April 5, 2011, Cosmetic Alchemy  
15 responded to Amazon's March 24 email, providing the information that Amazon  
16 requested regarding the products being sold under the Lashvitamin Listings. Among  
17 other things, Cosmetic Alchemy provided to Amazon the following ASINs for the  
18 products at issue: B0039YQ7WY and B004I6ATIA. Also in that email, Cosmetic  
19 Alchemy requested the immediate removal of the Lashvitamin Listings from  
20 Amazon.com. A true and correct copy of Cosmetic Alchemy's email is included in the  
21 email chain attached hereto as Exhibit F.

22           30. By email dated April 5, 2011, Amazon responded to Cosmetic Alchemy. In  
23 the April 5 email, Amazon specifically noted: "Please be advised that we are in the  
24 process of removing the seller listings you identified below from the detail pages you  
25 indicate on Amazon.com. It typically takes 2-3 days for a listing to disappear once it has  
26 been removed from our catalog." A true and correct copy of Amazon's April 5 email is  
27 included in the email chain attached hereto as Exhibit F.  
28

1           31. Despite Amazon's written assurance to Cosmetic Alchemy that it was in the  
2 process of removing the Lashvitamin Listings, six days after Amazon sent its April 5  
3 email, the Lashvitamin Listings still remained on Amazon's website. Thus, on April 11,  
4 2011, Cosmetic Alchemy sent Amazon yet another email, notifying Amazon that the  
5 Lashvitamin Listings had not yet been removed and requesting that the situation be  
6 corrected "expeditiously." A true and correct copy of Cosmetic Alchemy's April 11  
7 email is included in the email chain attached hereto as Exhibit F.

8           32. To date, Amazon has failed to remove the unauthorized LiLash<sup>®</sup> and LiBrow<sup>®</sup>  
9 product offerings from its website, and continues to intentionally offer these products for  
10 sale on its website without Plaintiffs' consent.

11           33. Amazon's continued offering for sale of the unauthorized LiLash<sup>®</sup> and  
12 LiBrow<sup>®</sup> products on its website is causing irreparable harm to Plaintiffs and, in addition,  
13 is putting the public safety at risk.

14  
15                   COUNT I: TRADEMARK INFRINGEMENT – 15 U.S.C. § 1114

16                   (by Plaintiff Stella)

17           34. Stella repeats and by this reference incorporates each and every allegation set  
18 forth in Paragraphs 1-33 of the Complaint as though set forth in full herein.

19           35. Stella is the owner of the '905, '521, and '777 Registrations for the LILASH  
20 Marks.

21           36. The unauthorized sale, offer for sale, and promotion on Amazon's website of  
22 the infringing LiLash<sup>®</sup> and LiBrow<sup>®</sup> products is likely to cause confusion or to cause  
23 mistake or to deceive as to affiliation, connection, or association of Amazon and/or  
24 Lashvitamin with Stella (and/or Stella's exclusive licensee, Cosmetic Alchemy) and the  
25 LILASH Marks, or as to the origin, sponsorship, or approval of the unauthorized  
26 products.

27           37. The actions of Amazon as alleged herein have been without Stella's consent.  
28 Amazon's actions constitute infringement of the federally registered LILASH Marks.

1 38. Amazon has failed to remove the unauthorized, infringing LiLash® and  
2 LiBrow® product offerings from its website despite having received notice that such  
3 product offerings violate the trademark rights in the LILASH Marks. Amazon's  
4 activities, particularly after receiving such notice, render Amazon's infringement  
5 intentional and willful.

6 39. As a direct and proximate result of Amazon's conduct alleged herein, Stella  
7 has suffered damages in an amount to be proven at trial.

8 40. Amazon's intentional and willful violations of the trademark rights in the  
9 LILASH Marks entitles Stella to an award of enhanced damages and attorneys' fees,  
10 pursuant to 15 U.S.C. § 1117.

11 41. Stella has no adequate remedy at law and, if Amazon's activities are not  
12 enjoined, will continue to suffer irreparable harm and injury to its goodwill and  
13 reputation.

14  
15 COUNT II: FALSE DESIGNATION OF ORIGIN – 15 U.S.C. § 1125

16 42. Plaintiffs repeat and by this reference incorporate each and every allegation  
17 set forth in Paragraphs 1-33 of the Complaint as though set forth in full herein.

18 43. Amazon's actions as alleged herein including, but not limited to its continued  
19 selling, offering for sale, and/or promotion of the unauthorized infringing LiLash® and  
20 LiBrow® products on its website constitute a false designation of origin, false or  
21 misleading descriptions of fact, and/or false or misleading representations of fact.

22 44. Amazon's actions as alleged herein are likely to cause and, on information  
23 and belief, have already caused confusion among the public, and are likely to deceive  
24 and, on information and belief, have already deceived customers concerning the source,  
25 origin, sponsorship or approval of the infringing LiLash® and LiBrow® products offered  
26 on Amazon's website.

27 45. As a direct and proximate result of Amazon's conduct alleged herein,  
28 Plaintiffs have suffered damages in an amount to be proven at trial.



1           46. Plaintiffs have no adequate remedy at law and, if Amazon's activities are not  
2 enjoined, will continue to suffer irreparable harm and injury to their goodwill and  
3 reputation.

4  
5                           COUNT III: COMMON LAW UNFAIR COMPETITION

6           47. Plaintiffs repeat and by this reference incorporate each and every allegation  
7 set forth in Paragraphs 1-33 of the Complaint as though set forth in full herein.

8           48. Amazon's actions as alleged herein are likely to cause and, on information  
9 and belief, have already caused confusion among the public, and are likely to deceive  
10 and, on information and belief, have already deceived customers concerning the source,  
11 origin, sponsorship or approval of the infringing LiLash® and LiBrow® products offered  
12 on Amazon's website.

13           49. Amazon's actions as alleged herein constitute unfair competition under the  
14 common law of the State of Arizona.

15           50. Amazon has been unjustly enriched and has caused damage to Plaintiffs'  
16 business, reputation, and goodwill.

17           51. Amazon's actions as alleged herein were intentional and willful, and  
18 committed in bad faith with an intent to confuse and deceive the public.

19           52. As a direct and proximate result of Amazon's conduct alleged herein,  
20 Plaintiffs have suffered damages in an amount to be proven at trial.

21           53. Plaintiffs have no adequate remedy at law and, if Amazon's activities are not  
22 enjoined, will continue to suffer irreparable harm and injury to their goodwill and  
23 reputation.

24  
25                           PRAYER FOR RELIEF

26           WHEREFORE, Plaintiffs Cosmetic Alchemy, LLC and Stella International, LLC  
27 respectfully pray for relief and judgment against Defendant Amazon.com, Inc., as  
28 follows:

1 a. For judgment in Plaintiffs' favor on all causes of action set forth herein;

2 b. That Amazon, its agents, servants, officers, directors, employees, joint  
3 venturers, and all persons acting in concert with them, directly or indirectly, be enjoined  
4 from directly or indirectly infringing the LILASH Marks in any manner, including, but  
5 not limited to selling, offering for sale, advertising, or promoting eyelash and eyebrow  
6 stimulator products under the LILASH Marks or any marks confusingly similar thereto,  
7 unless such eyelash and eyebrow stimulator products are made by or originate with  
8 Plaintiffs;

9 c. That Amazon, its agents, servants, officers, directors, employees, joint  
10 venturers, and all persons acting in concert with them, directly or indirectly, be enjoined  
11 from using any designation, trademark, trade name, logo, or design tending to falsely  
12 represent or likely to confuse, mislead, or deceive purchasers into believing that eyelash  
13 and eyebrow stimulator products sold, offered for sale, advertised, or promoted by  
14 Amazon originate from Plaintiffs or that such products have been sponsored, authorized,  
15 or licensed by or associated with Plaintiffs or are in some way connected or affiliated  
16 with Plaintiffs, including, but not limited to selling, offering for sale, advertising, or  
17 promoting eyelash and eyebrow stimulator products under the LILASH Marks or any  
18 marks confusingly similar thereto, unless such eyelash and eyebrow stimulator products  
19 are made by or originate with Plaintiffs;

20 d. That Amazon, its agents, servants, officers, directors, employees, joint  
21 venturers, and all persons acting in concert with them, directly or indirectly, be enjoined  
22 from otherwise infringing the LILASH Marks in any manner or damaging Plaintiffs'  
23 goodwill, reputation, or business, including, but not limited to selling, offering for sale,  
24 advertising, or promoting eyelash and eyebrow stimulator products under the LILASH  
25 Marks or any marks confusingly similar thereto, unless such eyelash and eyebrow  
26 stimulator products are made by or originate with Plaintiffs;

27 e. That Plaintiffs be awarded compensatory damages in an amount to be proven at  
28 trial;

1 f. That Plaintiffs be awarded monetary damages sufficient to recover: Amazon's  
2 profits, all damages sustained by Plaintiffs, and the costs of this action and that said  
3 amount be trebled or otherwise multiplied pursuant to 15 U.S.C. § 1117;

4 g. That Plaintiffs be awarded punitive damages sufficient to deter Amazon from  
5 committing willful acts of infringement in the future;

6 h. That Amazon be required to provide an accounting of all monies received as a  
7 consequence of its infringing acts;

8 i. That Plaintiffs recover their reasonable costs, expenses and attorneys' fees; and

9 j. That Plaintiffs be granted such other further relief to which they may be  
10 entitled.

11  
12 **DEMAND FOR JURY TRIAL**

13 Cosmetic Alchemy, LLC and Stella International, LLC hereby set forth their  
14 demand for a jury trial on all issues for which they are entitled to a jury trial.

15  
16 Respectfully submitted,

17 WEISS & MOY, P.C.

18  
19 Dated: April 13, 2011

20 By: s/ Karen J.S. Fouts  
Jeffrey Weiss (AZ Bar No. 012012)  
jweiss@weissiplaw.com  
21 Karen J.S. Fouts (AZ Bar No. 019993)  
kfouts@weissiplaw.com  
22 4204 N. Brown Avenue  
23 Scottsdale, Arizona 85251  
24 Tel: (480) 994-8888  
25 Fax: (480) 947-2663

26 Attorneys for Plaintiffs  
27 COSMETIC ALCHEMY, LLC and  
28 STELLA INTERNATIONAL, LLC